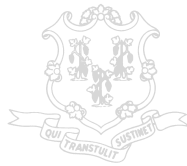


OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 13-174—sHB 6683

Judiciary Committee

Planning and Development Committee

AN ACT CONCERNING THE ABATEMENT OF A PUBLIC NUISANCE

SUMMARY: The public nuisance abatement law allows the state to file civil suits seeking various forms of relief when there are three or more arrests, or three or more arrest warrants indicating a pattern of criminal activity, for certain offenses at a property within the last year. Among other things, the law allows courts to order the property closed until the nuisance is eliminated.

This act broadens the circumstances in which the nuisance law applies. It adds various firearm-related offenses and other crimes to the public nuisance abatement statutes. It also adds certain municipal ordinance violations to these statutes and makes a corresponding change by allowing the state to file nuisance abatement suits when three or more citations for such violations are issued at a property within a year.

The act makes other changes in the nuisance abatement statutes. It lowers the state's burden of proof in nuisance abatement evidentiary hearings, from clear and convincing evidence (meaning it is highly probable or reasonably certain that the alleged facts are true) to a preponderance of the evidence (meaning it is more likely than not that the alleged facts are true). By law, if the state meets its burden at these hearings, there is a rebuttable presumption in its favor. Defendants can offer an affirmative defense that they took reasonable steps to stop the nuisance but were unable to do so.

The act also makes changes concerning financial institutions with an interest of record in a property at which a public nuisance occurs, including lowering the state's burden to prove that the institution had criminal responsibility for the nuisance.

The act also makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2013, except certain technical changes are effective January 1, 2015.

PUBLIC NUISANCES

Applicable Crimes and Violations

The act expands the grounds under which courts can close a property or take various other actions until a nuisance is abated (see BACKGROUND). It does this by adding the following crimes to the nuisance abatement statutes:

1. certain firearms-related crimes: carrying a handgun without a permit, firearms trafficking, unlawful discharge of firearms, possession of a sawed-off shotgun or silencer, stealing a firearm, criminal use or possession of a firearm or electronic defense weapon, and criminal possession of a

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- handgun;
- 2. illegal manufacture, sale, possession, or dispensing of prescription drugs; and
- 3. third-degree assault. (The public nuisance law already includes various other degrees of assault.)

The act also adds to the nuisance abatement law the following municipal ordinance violations that result in citations:

- 1. excessive noise on nonresidential property that significantly impacts the surrounding area, as long as the ordinance is based on an objective standard;
- 2. owning or leasing a dwelling unit where an excessive number of unrelated people live, resulting in dangerous or unsanitary conditions that significantly impact the surrounding area's safety; and
- 3. impermissible operation of a business that allows unlicensed people to practice massage therapy, or a massage parlor (as defined in the ordinance), that significantly impacts the surrounding area's safety.

Existing law includes several other offenses in the public nuisance statutes, such as various prostitution-related offenses; selling, possessing with intent to sell, or producing illegal drugs; and running a motor vehicle chop shop.

FINANCIAL INSTITUTION DEFENDANTS

By law, courts may not issue a public nuisance abatement order against a financial institution that (1) owns the property or claims an interest of record in it (under a mortgage, assignment of lease or rent, lien, or security interest) and (2) is not found to be a principal or accomplice to the conduct constituting the nuisance.

The act requires the state to prove by a preponderance of the evidence, rather than by the stricter clear and convincing evidence standard, that a financial institution claiming an interest of record in the property was a principal or accomplice to the alleged conduct. It specifies that these financial institutions can offer the same affirmative defenses as other defendants (i.e., that they have taken reasonable steps to abate the nuisance but were unable to do so).

BACKGROUND

Sanctions for Public Nuisance

The law authorizes various types of temporary and permanent relief to abate a public nuisance. For example, the state can apply for a temporary "ex parte" order when its sworn complaint and affidavit show that the nuisance poses a danger to the public health, welfare, or safety. Within specified time frames after issuing such an order, the court must hold a hearing to decide whether the order remains in place or whether other temporary orders should be entered.

Among other things, the court can:

- 1. appoint a receiver to manage and operate the property while a nuisance action is pending;
- 2. order the closing of the property or some part of it;
- 3. authorize the state to bring the property into compliance with state and

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local building, fire, health, housing, or similar codes, and order the defendant to pay the costs; and

4. impose civil fines or imprisonment for certain intentional violations.

The court maintains jurisdiction until it appears the nuisance no longer exists (CGS § 19a-343 et seq.).

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